(3)

BEFORE THE HON'BLE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

W.P.....163../2003.

PETITIONER : Ram Prasad Sahu s/o Shri Sarju Prasad Sahu, aged 45 years, Permanent resident of village Masabhat, P.O. Nikum, Distt. DURG (Chhattisgarh).

Assistant Teacher, Primary School Khursul, Block Gunderdehi, Distt. DURG (Chhattisgarh).

P.R. No. 03
Presented with by Shri R.S. Shrivastava
dated 02.01.03

Versus.

RESPONDENTS : 1. Secretary, Department of School Education, Government of Chhattisgarh D.K.S. Bhawan, RAIPUR.

2. District Education Officer, DURG.

3. Block Education Officer, GUNDERDEHI.

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Clerk to Mr. R.S. Shrivastava

Writ petition under Article 226/227 of the Constitution of India.

HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. No. 167 of 2003

Petitioner : Ram Prasad Sahu

Versus

Respondents : Secretary, Department of School Education and others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri.**

Shri Ajay Shrivastava, Advocate for the Petitioner.

Miss Deepali Pandey, Panel lawyer for the State/ respondents.

ORDER

(29th November, 2006)

1. Learned counsel for the petitioner submits that the petitioner has filed an affidavit dated 27.11.2006, stating that the petitioner is not pressing any other relief, except the grant of two advance increments and for other relief the petitioner may be granted liberty to file fresh petition. Thus, in this petition only the issue, asto whether the petitioner is entitled to the grant of two advance increments, is being considered.

2. The petitioner is working as Assistant Teachers in the government primary school, Khursul, block Gunderdehi, district Durg. Since the date of appointment on the post of Assistant Teacher i.e. 12.7.1986, the petitioner was having qualification of B.Ed. examination certificate, which he has acquired on his own expenses.

3. According to learned counsel for the petitioner, the petitioner is entitled to two advance increments in view of the decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal**

Corporation, Durg and another (2006 (II) MPJR-CG 96). This Court in the case of Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another (Supra), came to the conclusion that the teachers, who had obtained B. Ed. /B.T.I. Examination Certificate on their own expenses, are covered by the circular dated 24.12.98 (Annexure P/7) issued by the State Government of Madhya Pradesh.

4. Further in the matter of **Smt. Manorama Shrivastava Vs. State of M.P. and others** (2000 (1) M.P.L.S.R. 136) the Madhya Pradesh State Administrative Tribunal, Gwalior Bench, while considering the circular dated 1.3.1999 wherein, it is provided that the Assistant Teachers, who have acquired B.Ed. degree at their own cost between 23.10.1964 and 7.5.1973 shall be entitled to two advance increments, relied on decision in the case of **Rakesh Kumar Shrivastava Vs. State of M.P. & others** passed in O.A.No. 1632/99, decided on 12.10.1999 wherein it is observed that the circular dated 1.3.1999 cannot be made applicable retrospectively. Thus, a teacher, may be Assistant Teacher, who has obtained B.Ed. degree before 1.3.1999 is entitled to two advance increments.

5. It is pointed out by learned counsel appearing for the petitioner that the then State of Madhya Pradesh had filed a Special Leave Petition against the orders passed by the Tribunal and the Hon'ble Supreme Court dismissed **Special Leave Petition No. 1999/2000** filed against the order of the Tribunal. Therefore, the direction to the effect that the circular dated 1.3.1999 cannot be made applicable retrospectively, passed by the Tribunal, becomes final and the same shall be applicable to all the Assistant

Teachers who have obtained B.Ed./B.T.I. examination certificate before 1.3.1999. It is further substantiated by a circular dated 17.10.2003 issued by the present State of Madhya Pradesh wherein the circular clearly states about the decision of the Supreme Court.

6. Learned counsel for the petitioner further submits that the facts and question of law involved in the present case are squarely covered by decision of this Court in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), to which learned counsel appearing for the respondents fairly concedes and agrees with the averment made by learned counsel appearing for the petitioner.

7. Accordingly, the writ petition is allowed in terms of the order passed in the case of **Yashwant Kumar Bharadwaj Vs. Municipal Corporation, Durg and another** (Supra), subject to verification of the fact as to whether the petitioner has acquired B. Ed. Examination Certificate on his own expenses as per the circulars dated 24.12.1998 & 1.3.1999 and further whether he has been paid two advance increments or not. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur